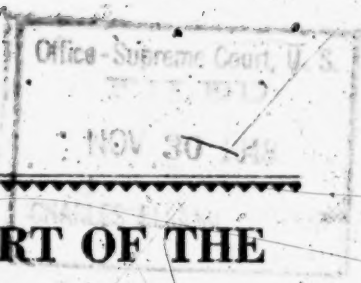


# IN THE SUPREME COURT OF THE UNITED STATES

**October Term, 1948**

**Nos. 40 and 41**

OKLAHOMA TAX COMMISSION,
*Petitioner,*
VERSUS
THE TEXAS COMPANY,
*Respondent;*

OKLAHOMA TAX COMMISSION,
*Petitioner,*
VERSUS
MAGNOLIA PETROLEUM COMPANY,
*Respondent.*

## REPLY BRIEF

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NOVEMBER, 1948.

KING LAW BRIEF COMPANY, 418 NORTHWEST THIRD, OKLAHOMA CITY—PHONE 3-2969

# INDEX

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## REPLY BRIEF

At the conclusion of the oral argument in the above cases, the Court graciously allowed our request for leave to file a reply brief herein.

I.

## THE RESPONDENTS ARE NOT FEDERAL INSTRUMENTALITIES

We suggest at pages 41 and 42 of our original brief that it was extremely doubtful whether the respondents were in fact federal instrumentalities. We there pointed out that the record failed to disclose any substantial difference between the services rendered by respondents under departmental leases and those rendered under non-departmental leases. We also pointed out that the record failed to disclose wherein the respondents were more fully and rigorously regulated when operating under departmental leases than when operating under nondepartmental leases. We approached this issue hesitantly for the reason this Court held in *Choctaw O. & G. R. R. Co.* v. *Harrison*, 235 U.S. 292, and in subsequent opinions based thereon, that lessees rendering services under a departmental lease were federal instrumentalities. Another reason we so approached the issue was that the Government had not spoken and made known its position. The Federal Government through the Solicitor General has now spoken in an *amicus curiæ* brief filed herein. Therein the claim of federal instrumentality asserted by respondents is emphatically denied.

The question of whether or not an agency performing services for the Federal Government is in fact a federal instrumentality is a question of fact. The mere fact that the agency performs services does not within itself make it a federal instrumentality. See *Shaw* v. *Gibson-Zahniser Oil Corporation*, 276 U.S. 575, and *Metcalf & Eddy* v. *Mitchell*, 369 U.S. 514. The immunity granted to an

agency is granted for the sole purpose of protecting the Government and will not be extended further than necessary to effect that purpose. *I. T. I. O. Co. v. Board of Equalization*, 288 U.S. 325. In referring to this last mentioned rule, the Court pointed out in *James v. Dravo Contracting Co.*, 302 U.S. 134, 158, that the right of implied immunity in an agency performing services for the Government is a derivative one and as we read the opinion, the claim will probably be denied where the Government disclaims the immunity. This statement is based upon the following quoted portion of the opinion:

> "* * * The defense is that the tax burdens the Government, and respondent's right is at best a derivative one. He asserts an immunity, which, if it exists, pertains to the Government which the Government disclaims."

The respondents are not creatures of Congressional legislation. They are private corporations engaged in business for profit. Their claim to the status of federal instrumentality is based solely upon the proposition that they perform a service in which the Federal Government is interested and in the performance of which they are regulated.

We asserted in our original brief that the respondents are as fully and completely regulated in their operations under a nondepartmental lease as they are under a departmental lease. In support of this statement, we direct the Court's attention to the rules of the Corporation Commission of the State of Oklahoma and of the applicable Oklahoma statutes. The rules of the Corporation Commission

in effect when the taxes here assessed accrued, are set forth at length in Appendix 1 hereof. We wish to briefly summarize these rules.

Rule 13, provides that the lessee must give notice of intention to drill; Rule 30, provides for reports on wells shot; Rule 37, provides that the lessee must keep and file a copy of the well's log and by Rules 37 and 38, well records must be kept and made accessible to the State's representative; Rule 32, provides that the flow of gas must be restrained to 25% of the potential production; Rule 12, provides that the lessee must use every possible precaution to prevent waste of oil or gas; Rule 17, provides that adequate precaution must be made to keep wells under control; Rule 33, requires that notice of fires be given; Rule 18, provides for the maintaining of separate slush pits; Rules 19, 20 and 25, provide that fresh water must be shut off and that oil and gas sands be protected; Rule 14, provides for plugging wells and how wells shall be plugged, etc.

Sections 81 to 279, Title 52, O. S. 1941, provide comprehensive and effective measures for the conservation of oil and gas produced in Oklahoma. It was under the terms and provisions of these sections of the statute that the Corporation Commission on June 25, 1941, held a hearing in connection with the application of the Texas Company for an order directed to the conserving of oil and gas then being produced from what is generally known as the "Apache Pool." In this field are located the oil and gas properties involved in the *Texas case*. At the hear-

ing, the United States Geological Survey was represented by E. M. Pilkinton. In consideration of the evidence introduced at the hearing, the Corporation Commission made and entered an order dividing the field into drilling units of twenty acres each; ordered that the surface casing and the second string or flow string be set in a certain manner and cemented; that the tubing used should not exceed 2½ inches, and that the plan of setting casing should be submitted to and approved by the Corporation Commission. This order was permitted to become final.

April 21, 1942, a hearing was had on the application of the State Conservation officers to amend the above referred to order. Both the Texas Company and the Geological Survey appeared at this hearing. The Corporation Commission amended the order of June 25, 1941, so as to provide for operating measures that would protect the Permian Sand, Viola Lime and Hunton Lime horizons of the field. This order was permitted to become final.

In connection with the Paukune properties located in what is generally known as the "East Cement Field," which property is involved in the *Texas case*, the Corporation Commission, in 1943, entered an order directed to the matter of ascertaining the potential production of the wells in the field and further ordered that none of the wells should be permitted to produce more than 25% of their potential. This order was permitted to become final.

The proceedings before the Corporation Commission and the actions taken by that body disclose that: (1) The

State of Oklahoma was in a position to regulate and control respondents in producing oil and gas from the properties here involved; (2) that Oklahoma was not only in a position to so regulate and control it but did do do; and, (3) that the Geological Survey apparently acquiesced in the actions of the Corporation Commission.

The Geological Survey was not in a position to effectively conserve the oil and gas being produced from the fields in which the properties here involved are located. This is true for the reason that the Geological Survey had no jurisdiction over non-Indian lands of unrestricted Indians. To effectively conserve the production of oil and gas, it is of course necessary that the entire field be regulated and since the Corporation Commission was the only authority in a position to do this, it is only natural that the regulation and control of the fields was turned over to the Corporation Commission.

The rules and regulations of the Corporation Commission attached hereto are not incorporated in the record. However, in the case of *State ex rel. Murphy* v. *Coca-Cola Bottling Co.*, 190 Okla. 590, 126 Pac. (2d) 86, the Supreme Court of Oklahoma held that it would take judicial notice of the rules and regulations prescribed by an executive branch of the Government. The orders of the Corporation Commission that are herein referred to are not contained in the record. These orders covered entire oil fields, and, therefore, affected a great number of people. It is for this reason that we assume that the lower tribunals

could properly have taken judicial knowledge of these orders. Since the lower tribunals could have taken judicial knowledge of the things above referred to, this Court on appeal can do so. See 20 Amer. Jur., page 63, Sec. 40.

This Court has consistently and repeatedly held the fact that a contractor or a lessee is regulated, does not make it a federal instrumentality.

See:

*Buckstaff Bath House Co. v. McKinley*,
308 U.S. 358, 363;
*James v. Dravo Contracting Co.*,
302 U.S. 134, 149;
*Alabama v. King & Boozer*,
314 U.S. 1, 13.

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(a)

**Petitioner did not admit any conclusions plead by the Texas Company.**

The Texas Company suggests that the respondents admitted the allegations of its petition to the effect that it was a federal instrumentality and that the taxes assessed burdened it as such. As we heretofore pointed out, the proposition of whether or not entity is a federal instrumentality is a question of fact and this is also true on the proposition of whether or not a tax in fact burdens. It follows that the allegations of the petition to the effect that the Texas Company was a federal instrumentality and that the taxes assessed burdened it, were mere conclusions on the part of the pleader and as such were not admitted on demurrer.

See:

*Wright et al. v. State ex rel. Walcott*
104 Okla. 57, 230 Pac. 268;
*Holway v. World Publishing Co.*,
171 Okla. 306, 44 Pac. (2d) 881.

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II.

## THE RULE OF LAW ANNOUNCED IN THE MOUNTAIN PRODUCERS' CASE WAS NOT LIMITED TO INCOME TAX CASES

In *Helvering v. Mountain Producers Corp.*, 303 U.S. 376, 385, this Court laid down a broad comprehensive rule of law to the effect that the right to impose a non-discriminatory tax would not be denied where:

> "* * * no direct burden is laid on the governmental instrumentality, and there is only remote, if any, influence upon the exercise of the functions of government."

The respondents contend that the rule so announced was limited to income tax cases; that this Court in effect merely held that there had been an unwarranted extension of the doctrine of implied immunity to income taxes. This construction is contrary to the plain language of the opinion; to the construction of the dissenting Justices; to the construction placed on the opinion in subsequent opinions of this Court and to the construction of the Supreme Court of Montana in *Santa Rita Oil Company v. State Board of Equalization*, 116 Pac. (2d) 1012.

The *Mountain Producers' case* is cited with approval in the following cases:

*Oklahoma Tax Commission* v. *United States*, 319 U.S. 598, 610, where Oklahoma was permitted to impose an estate tax on the estates of members of the Five Civilized Tribes. The Court there said that:

> "*Helvering* v. *Mountain Producers Corporation* * * * repudiated former decisions, seriously limiting the state and federal power to tax; * * *."

*New York* v. *United States*, 326 U.S. 572, 581, where a federal excise tax imposed on water bottled by the State of New York from springs by it owned, was sustained, the Court stated:

> "In the older cases the emphasis was on immunity from taxation. The whole tendency of recent cases reveals a shift in emphasis to that of limitation upon immunity; * * *."

*West* v. *Oklahoma Tax Commission*, 68 S. Ct. 1223, 1228, where Oklahoma was permitted to impose an estate tax on the estates of members of the Osage Tribe, the Court stated:

> "Moreover, express repudiation was made of the concept that these restricted properties were federal instrumentalities and therefore constitutionally exempt from estate tax consequences. See also: *Helvering* v. *Mountain Producers Corporation*, * * *."

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## III.

## THE OKLAHOMA LEGISLATURE HAS NOT INTERPRETED THE GROSS PRODUCTION TAX ACT AS NOT APPLYING TO RESPONDENTS

The respondents contend that by the terms of a 1925 Act of the Oklahoma Legislature, which Act appears at

Section 832, Title 68, O. S. 1941, the Oklahoma Legislature in effect interpreted the Gross Production Tax Act as not applying to them here. The above referred to Section of the statute is quoted in the footnote at Page 21 of the Texas Company's brief. In substance the Section provides that in all cases of overpayment, duplicate payment or payment made in error on account of the production being derived from restricted Indian lands and therefore exempt from taxation, the State Auditor shall refund the taxes.

It is our position that the above referred to Section is nothing more than a refund provision. It is apparent from the language employed that the Legislature appreciated that in some instances, production from restricted Indian lands was taxable and in other instances it was not. The Legislature, therefore, merely provided that in those instances where the production was not taxable, that a refund should be made. It did not pretend to enumerate the instances in which the production would be non-taxable. The respondents do not contend that the sections of the Gross Production Act under which the taxes in the instant cases were levied are ambiguous and since there is no ambiguity, the statutes will be construed solely in accordance with the language therein used. Among the many cases where the Supreme Court of Oklahoma has so held, is *Board of Equalization of Oklahoma* v. *Bonner*, 185 Okla. 431, 93 Pac. (2d) 1077. We also wish to point out that the effect of respondents' contention is that the

refund statute under discussion is an exemption statute. This, we deny, but if this it is, then it is to be strictly construed. The Supreme Court of Oklahoma so held in the *Bonner case, supra.*

The contention now made by respondents is wholly inconsistent with the construction that they have placed on the Gross Production Tax Act. The construction that we refer to, arises from the fact that the Magnolia Petroleum Company voluntarily paid the gross production and proration tax accruing on all properties involved in its case from March 7, 1938, to May 31, 1941, and has at no time sought a refund of these taxes. The Texas Company paid both the gross production and the proration tax on the properties involved in its case from the date production was first brought in, to August 31, 1942. Production on the Maynahonah and Mulkehay leases was brought in in December, 1941, and on the Achilta lease in January, 1942. We attach hereto as Appendix 2, a photostatic copy of a certificate of the Oklahoma Tax Commission showing the facts above referred to.

We do not contend that the fact that respondents voluntarily paid the taxes during the period of time hereinbefore set out, is any proof that they owe the taxes for which they here seek recovery, but we do insist that their actions in voluntarily paying the taxes can and should be considered in evaluating their argument to the effect that the Legislature did not intend to impose a tax on their properties.

## IV.

## SILENCE OF CONGRESS DOES NOT IMPLY IMMUNITY

The respondents insist that since Congress has not expressly consented to the imposing of gross production and proration taxes on the production from the lands of members of Wild Tribes, that this spells immunity on their parts from the taxes here assessed. This contention was considered in *Graves et al.* v. *People of State of New York*, 306 U.S. 466, 476, and rejected in the following words:

> "It is true that the silence of Congress, when it has authority to speak, may sometimes give rise to an implication as to the Congressional purpose. The nature and extent of that implication depends upon the nature of the Congressional power and the effect of its exercise. But there is little scope for the application of that doctrine to the tax immunity of governmental instrumentalities. The constitutional immunity of either government from taxation by the other, where Congress is silent, has its source in an implied restriction upon the powers of the taxing government. So far as the implication rests upon the purpose to avoid interference with the functions of the taxed government or the imposition upon it of the economic burden of the tax, it is plain that there is no basis for implying a purpose of Congress to exempt the federal government or its agencies from tax burdens which are unsubstantial or which courts are unable to discern. Silence of Congress implies immunity no more than does the silence of the Constitution. It follows that when exemption from state taxation is claimed on the ground that the federal government is burdened by the tax, and Congress has disclosed no intention with respect to the claimed immunity, it is in order to consider the nature and effect of the alleged burden, and if it appears that there is no ground for implying a constitutional immunity, there is equally a want of any ground for assuming any purpose on the part of Congress to create an immunity."

The respondents refer to a number of Congressional Acts under which consent was given to impose severance taxes on oil and gas produced from the lands of certain Indian Tribes. A number of these Acts are cited at Pages 31 and 32 of the Solicitor General's *Amicus Curiæ* Brief. In addition to the Acts there cited, we direct the Court's attention to an Act of May 29, 1924, 43 Stat. 244, 25 U.S.C.A. 398, by the terms of which consent was given to impose a tax on the oil, gas and other minerals produced from unallotted lands on Indian reservations. It seems to us that in this last mentioned Act and in all of the other Acts, it is obvious that Congress had in mind and was legislating in connection with the property rights of the Indian and not of the lessee producing from his lands. The Indian is the ward of the Federal Government and not the lessee. The fact that the social and economic condition of the several tribes of Indians varies is not subject to dispute. This is not true of lessees as a class. Their economic conditions, generally speaking, do not vary. It is for these reasons that we suggest that no intent should be imputed to Congress to make the lessee's properties subject to tax when the lessee is producing from unallotted lands on reservations and not subject to tax when producing from the allotted lands of members of the Wild Tribes.

(a)

**Government ownership of the lands would not defeat the taxes here assessed.**

During the oral argument, Mr. Chief Justice Vinson inquired of counsel whether or not ownership of the lands in the Federal Government would defeat the taxes here assessed. We submit that this query was directly answered in the negative in *Wilson* v. *Cook*, 327 U.S. 474, 482. The State of Arkansas there imposed a severance tax on a contractor cutting and taking timber from lands of the United States. This Court sustained the tax on authority of *James* v. *Dravo Contracting Co.*, *supra*, and *Alabama* v. *King & Boozer*, *supra*.

We wish to point out that the contractor in the *Wilson* v. *Cook case* was regulated by the Federal Government. This is apparent by Secs. 221.1, 221.29, Title 36, Code of Federal Regulations. As a matter of fact, all contractors and lessees performing services for the Federal Government are regulated.

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V.

## THEORETICAL AND SPECULATIVE BENEFITS WILL NOT BE CONSIDERED

The respondents assert that the Indians would be directly benefited through a striking down of the taxes here imposed. This argument is based on the theoretical assumption that (1) the Indians would receive a greater amount as a bonus when their oil and gas leases were put

up for sale if the properties of the lessees are exempted from taxes; and (2) if the lessees are relieved from the taxes here imposed it might be possible to profitably produce a stripper well for a longer period of time and thus produce more oil. In *Helvering* v. *Mountain Producers Corp.*, 303 U.S. 376; *State of New York* v. *United States*, 326 U. S. 572, 577; *Helvering* v. *Gerhardt*, 304 U.S. 405, 460, and *Graves et al.* v. *New York*, 306 U.S. 466, 484, this Court held that regard must be had to substance and direct effects and that theoretical and speculative conceptions of interference and burdens will not be considered.

## VI.

## COMMERCE WITH INDIAN TRIBES IS NOT HERE SHOWN

Mr. R. O. Mason and Mr. Hayes McCoy have filed herein an *Amicus Curiæ* brief. They therein point out that Congress under Sec. 8, Art. 1 of the Constitution of the United States has power "to regulate Commerce * * with the Indian tribes," and assert that since Congress has not here given express consent to imposing the taxes here assessed, Oklahoma is wholly without right or power to impose the taxes.

The Texas Company made mention of the Commerce clause in its amended petition (Tr. 29).

The provision of the Constitution so relied upon by *Amicus Curiæ* has no application here. The properties involved in the instant case are not owned by any tribe of

Indians. The lands have been alloted and for such reason the allottee and not the tribe of which he is a member is the beneficial owner of the lands and any profits accruing thereto. Since the Act of March 3, 1871, 25 U.S.C.A. 71, no Indian tribe has been recognized as an independent sovereignty. The rights of citizenship have been bestowed upon Indians. The Indians here involved as citizens of the State of Oklahoma are subject to the laws of the State of Oklahoma. The change in the status of the Indians and of the Indian Tribes is discussed in *Oklahoma Tax Commission* v. *United States*, 319 U.S. 589, at Pages 602 and 603.

We not only do not have any Indian Tribe here involved, we also do not have any commerce with an Indian. In *Champlin Refining Co.* v. *Corporation Commission*, 286 U.S. 210, 235, this Court held that the production of oil and gas is essentially a mining operation and is therefore not a part of commerce even though the product obtained is intended to be and is in fact immediately shipped to such commerce.

In *Hope Natural Gas Co.* v. *Hall*, 274 U.S. 284, 288, this Court in effect held that the matter of producing gas was not commerce.

## CONCLUSION

In conclusion, the petitioner respectfully submits that the judgments of the Supreme Court of the State of Okla-

homa should be reversed and the petitioner should here be permitted to impose the taxes assessed.

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JOE M. WHITAKER,
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NOVEMBER, 1948.

## APPENDIX I

CORPORATION COMMISSION
OF OKLAHOMA

Cause No. 2935 Order No. 1299

IN RE:

PROPOSED ORDER NO. 159 FOR THE PROMULGATION OF ADDITIONAL AND SUPPLEMENTAL RULES FOR THE CONSERVATION OF OIL AND NATURAL GAS.

ORDER:

The Corporation Commission having held hearing and investigation pursuant to Proposed Order No. 159 and the Oil and Natural Gas Conservation Laws of the State and in accordance with the provisions thereof having made its findings of fact, and being fully advised in the premises, it is therefore considered, ordered and adjudged that the following rules, regulations and requirements be and are hereby prescribed

RULE 1. *Waste Prohibited.* Natural gas and crude oil or petroleum shall not be produced in the State of Oklahoma in such manner and under such conditions as to constitute waste. (Sec. 1, Ch. 197, S. L. 1915; Rule 1, Order No. 937.)

RULE 2. *Waste Defined.* The term waste as above used in addition to its ordinary meaning, shall include (a) escape of natural gas in commercial quantities into the open air; (b) the intentional drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; and (e) the wasteful utilization of such gas. (Sec. 2, Ch. 197, S. L. 1915; Rule 2, Order No. 937.)

RULE 3. *Gas to be Confined—Strata to be Protected.* Whenever natural gas in commercial quantities or a gas bearing stratum known to contain natural gas in such quantities is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste, and all such strata shall be adequately protected from infiltrating waters. (Sec. 3, Ch. 197, S. L. 1915; Rule 3, Order No. 937.)

RULE 4. *Commercial Quantities Defined.* Any gas stratum showing a well defined gas sand and producing gas shall be considered capable of producing gas in commercial quantities and any gas coming from such a stratum or sand shall be considered a commercial quantity, and such stratum or sand shall be protected the same as if it produced gas in excess of two million cubic feet per day of twenty-four hours. (Sec. 3, Ch. 197, S. L. 1915; Rule 4, Order No. 937.)

RULE 5. *Gas to be Taken Ratably.* Whenever the full production from any common source of supply of natural gas in this State is in excess of the market demands, then any person, firm or corporation having the right to drill into and produce gas from any such common source of supply, may take therefrom only such portion of the natural gas that may be marketed without waste, as the natural flow of the well or wells owned or controlled by any such person, firm or corporation bears to the total natural flow of such common source of supply having due regard to the acreage drained by each well, so as to prevent any such person, firm or corporation securing any unfair proportion of the gas therefrom; provided, that the Corporation Commission may by proper order, permit the taking of a greater amount whenever it shall deem such taking reasonable or equitable. (Sec. 4, Ch. 197, S. L. 1915; Rule No. 5, Order No. 937.)

RULE 6. *Common Purchaser Rule.* Every person, firm or corporation, now or hereafter, engaged in the business of purchasing and selling natural gas

in this State, shall be a common purchaser thereof, and shall purchase all of the natural gas which may be offered for sale, and which may reasonably be reached by its trunk lines, or gathering lines, without discrimination in favor of one producer as against another, or in favor of any one source of supply as against another save as authorized by the Corporation Commission after due notice and hearing, but if any such person, firm or corporation shall be unable to purchase all the gas so offered, then it shall purchase natural gas from each producer ratably. (Sec. 5, Ch. 197, S. L. 1915; Rule 6, Order No. 937.)

RULE 7. *Common Purchaser — Discrimination Prevented.* No common purchaser shall discriminate between likes grades and pressures of natural gas, or in favor of its own production or of production in which it may be directly or indirectly interested, either in whole or in part, but for the purpose of prorating the natural gas to be marketed, such production shall be treated in like manner as that of any other producer or person, and shall be taken only in the ratable proportion such production bears to the total production available for marketing. (Sec. 5, Ch. 197, S. L. 1915; Rule 7, Order No. 937.)

RULE 8. *Gas to be Metered.* All gas produced from the deposits of this State when sold shall be measured by meter and the Corporation Commission shall upon notice and hearing, relieve any common purchaser from purchasing gas of an inferior quality or grade and the Commission shall from time to time make such regulations for delivery, metering and equitable purchasing and taking as conditions may necessitate. (Sec. 5, Ch. 197, S. L. 1915; Rule 8, Order No. 937.)

RULE 9. *Commission Shall Regulate the Taking of Natural Gas.* The Corporation Commission shall as occasion arises prescribe rules and regulations for the determination of the natural flow of any well or wells in this State, and shall regulate the taking of natural gas from any and all common sources of sup-

ply within the State so as to prevent waste, protect the interests of the public and of all those having a right to produce therefrom, and shall prevent unreasonable discrimination in favor of any one common source of supply as against another. (Sec. 4, Ch. 197, S. L. 1915; Rule 9, Order No. 937.)

RULE 10. *Eminent Domain — Acceptance of Law to be Filed with Commission.* Before any person, firm or corporation, shall have, possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain, construct or operate pipe lines, fixtures, or equipment belonging thereto or used in connection therewith, for the carrying or transportation of natural gas, whether for hire or otherwise, or shall have the right to engage in the business of purchasing, piping, or transporting natural gas, as a public service corporation, or otherwise, such person, firm or corporation shall file in the office of the Corporation Commission a proper and explicit authorized acceptance of the provisions of the law. (Sec. 9, Ch. 197, S. L. 1915; Rule 10, Order No. 937.)

"RULE 11. *Duties of Conservation Officers in Reference to Rule 10.* All conservation agents of the Corporation Commission are directed to inquire into the matter of the performance of and compliance with the foregoing rule (No. 10), and to prevent the transportation of gas by any person, firm or corporation, found not to have complied with said rule. (Sec. 8, Ch. 197, S. L. 1915; Rule 11, Order No. 937.)

"RULE 12. *Approved Methods of Preventing Waste to be Used.* All operators, contractors, or drillers, pipe line companies, gas distributing companies or individuals, drilling for or producing crude oil or natural gas, or piping oil or gas for any purpose, shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations; storage, or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes. (See also Rule 28, *infra.*)

"RULE 13. *Notice of Intention to Drill, Deepen or Plug.* Notice shall be given to the Corporation Commission of the intention to drill, deepen or plug any well or wells and of the exact location of each and every well. In case of drilling, notice should be given at least five days prior to the commencement of drilling operations.

"Notice of intention to plug must be accompanied by a complete log of the well, on forms prescribed by the Corporation Commission.

"Blanks for notification and reports can be obtained on application to the Corporation Commission or its conservation agents.

"RULE 14. *Plugging Dry and Abandoned Wells.*

"(a) Must be Plugged Under Supervision of Conservation Agent.

"All abandoned or dry wells shall immediately be plugged under the supervision of an oil and gas conservation agent of the Corporation Commission.

"(b) Manner of Plugging.

"All dry or abandoned wells must be plugged by confining all oil, gas or water in the strata in which they occur by the use of mud-laden fluid, and in addition to mud-laden fluid, cement and plugs may be used.

"These wells must first be thoroughly cleaned out to the bottom of the hole and before casing is removed from the hole, the hole must be filled from the bottom to the top with mud-laden fluid of maximum density and which shall weigh at least 25 per cent. more than an equal volume of water; unless the Commission directs that some other method shall be used.

"(c) Notice of Intention to Plug.

"Before plugging dry and abandoned wells, notice shall be given to the Corporation Commission or its conservation agent in the field, and to all available adjoining lease and property owners, and representatives of such lease and property owners, may, in addi-

tion to the oil and gas conservation agent of the Commission, be present to witness the plugging of these wells if they so desire, but plugging shall not be delayed because of failure or inability to deliver notices to adjoining lease and property owners.

"RULE 15. *Log and Plugging Record to be Filed With Commission.* The owner or operator shall, upon completion of any well, file with the Corporation Commission a complete record or log of the same, duly signed and sworn to, upon blanks to be furnished by the Commission upon application; and upon plugging any well for any cause whatsoever, a complete record of the plugging thereof shall be made out and duly verified on blanks to be furnished by the Commission. (Rule 25, Order No. 937.)

"RULE 16. *Proper Anchorage to be Laid.* Before any well is begun in any field where it is not known that high pressure does not exist, proper anchorage shall be laid, so that the control casing-head may be used on the inner string of casing at all times, and this type of casing-head shall be kept in constant use unless it is known from previous experience and operations on wells adjacent to the one being drilled that high pressure does not exist, or will not be encountered therein. (Rule 15, Order No. 937.)

"RULE 17. *Equipment for Conserving Natural Gas Shall Be Provided Before "Drilling In."* In all proven or well defined gas fields, or where it can reasonably be expected that gas in commercial quantities will be encountered, adequate preparation shall be made for the conservation of gas before "drilling in" any well; and the gas sands shall not be penetrated until equipment (including mud pumps, lubricators, etc.), for "mudding in" all gas strata, or sands, shall have been provided.

"RULE 18. *Separate Slush Pit to be Provided.* Before commencing to drill a well, a separate slush pit or sump hole shall be constructed by the owner, operator or contractor for the reception of all pumpings from clay or soft shale formations in order to have

the same on hand for the making of a mud-laden fluid. (Rule 14. Order No. 937.)

NOTE. In order to avoid freezing casing, operators are cautioned not to allow sand or lime to be mixed with clay or soft shale pumpings.

RULE 19. *Wells Not to be Permitted to Produce Oil and Gas from Different Strata.* No well shall be permitted to produce both oil and gas from different strata unless it be in such manner as to prevent waste of any character to either product. Therefore, if a strata should be encountered bearing gas and the owner, operator, or contractor should go deeper in search for other gas or oil bearing sands, the stratum first penetrated and likewise each and every sand in turn, shall be closed separately, and if it is not wanted for immediate use, it shall be securely shut in so as to prevent waste, either open or underground. (Rule 16. Order No. 937.)

RULE 20. *Strata to be Sealed Off.* No well shall be drilled through or below any oil, gas or water stratum without sealing off such stratum or the contents thereof, after passing through the sand, either by the mud-laden fluid process or by casing and packers, regardless of the volume or thickness of sand. (Rule 17. Order No. 937.)

RULE 21. *Mud-Laden Fluid to be Applied.* No gas sand or stratum upon being penetrated shall be drilled or left open more than three days without the application of mud-laden fluid to prevent the escape of gas while further drilling in or through such sand stratum. (Sec. 3, Ch. 197, S. L. 1915; Rule 18. Order No. 937.)

RULE 22. *Density of Mud Fluid Where Well Containing Water Is Drilled into Oil or Gas Producing Strata.* No operator shall drill a well into an oil or gas producing sand with water from a higher formation in the hole, or with a sufficient head of water introduced into the hole to prevent gas blowing to the surface. The well shall either be allowed to blow

until the sand has been drilled in or it shall be drilled in under a head of fluid consisting of not less than 25 per cent. mud; but in no case shall gas be allowed to blow for a longer period than three days. Mud fluid used for protecting oil and gas bearing sands in upper formations while oil or gas is being produced from deeper formations shall have a density of not less than 25 per cent. mud and should contain not less than 28 per cent. mud.

RULE 23. *Mud-Laden Fluid to be Applied in Pulling or Redeeming Casing.* No outside casing from any oil or gas well in an unexhausted oil or gas field shall be pulled without first flooding the well with mud-laden fluid behind the inside string of casing, after unseating the casing, and as casing is withdrawn, well shall be kept full to top with said mud-laden fluid and same shall be left in the hole; and said mud-laden fluid shall be so applied as to effectively seal off all fresh or salt water strata, and all oil or gas strata not being utilized. (Rule 23, Order No. 937.)

RULE 24. *Mud-Laden Fluid — When to be Applied to Completed Wells.* When necessary (or in any event when ordered by the Corporation Commission) to seal off any oil, gas or water sand, casing shall be seated in mud-laden fluid; and concerning wells already drilled, the operator shall, upon the order of the Corporation Commission, raise any string or strings of casing and re-set them in mud-laden fluid when it is thought advisable to do so in order to avoid existing underground waste, pollution or infiltration. (Rule 22, Order No. 937.)

RULE 25. *Fresh Water to be Protected.* Fresh water, whether above or below the surface, shall be protected from pollution, whether in drilling or plugging. (Rule 14, Order No. 937.)

RULE 26. *Gas to be Separated from Oil.* No gas found in the upper part of a level or sand which can be separated from the oil in the lower part of the same sand or in a lower or different sand shall be allowed or used to flow oil to the surface and all gas so far

as it is possible to do so, shall be separated from the oil and securely protected. (Rule 19, Order No. 937.)

"RULE 27. *Separating Device to be Installed Upon Order of Commission.* Where oil and gas are found in the same stratum and it is impossible to separate the one from the other, the operator shall, upon being so ordered by the Corporation Commission, install a separating device of approved type, which shall be kept in place and use as long as necessity therefor exists, and after being installed, such device shall not be removed nor the use thereof discontinued without the consent of the Corporation Commission. (Rule 20, Order No. 937.)

"RULE 28. *Gas Wells Not to Produce from Different Sands at the Same Time Through the Same String of Casing.* No gas well shall be permitted to produce gas from different levels, sands or strata at the same time through the same string of casing. (Sec. 3, Ch. 197, S. L. 1915), and when gas upon being found is not needed for immediate use, the same shall be confined in its original stratum until such time as the same can be produced and utilized without waste (Sec. 3, Ch. 197, S. L. 1915), and in confining gas to its original place, the mud-laden fluid process shall be used unless the character of the formation involved is sufficiently ascertained and understood to know that the casing and packer method with Bradenhead attachment can be safely applied and competently used, and in the use of the casing, packing and Bradenhead method, separate strings of casing shall be run to each sand and the application of the latter method in preference to the former shall not be made without notice to and consent of the Corporation Commission. (Rule 21, Order No. 937.)

"RULE 29. *Vacuum Pumps Not to be Installed Except Upon Application to This Commission.* The future installation of vacuum pumps or other devices for the purpose of putting a vacuum on any gas or oil bearing stratum is prohibited; provided that any operator desiring to install such apparatus may, upon

notice to adjacent lease owners or operators, apply to the Commission for permission; and in the matter of vacuum pumps heretofore installed, the use of same is authorized unless specifically discontinued by order of the Commission upon notice and hearing. (Rule 22, Order No. 937.)

"RULE 30. *Shooting of Wells.*

"(a) Wells Not to be Shot into Salt Water.

"No well shall be shot as to let in salt water or other foreign substance injurious to the oil or gas sand.

"(b) Reports to be Made to the Corporation Commission.

"Reports shall be made to the Corporation Commission on all wells shot, showing the condition of the well before and after shooting, including the size of the shot, sand or sands shot, production before and after shooting, per cent. of water in well before and after shooting.

"(c) Damaged Wells to be Abandoned.

"In case irreparable injury is done to the well, or to the oil or gas sand or sands by shooting, the well shall immediately be abandoned and plugged as provided by Rule No. 14 herein.

"RULE 31. *Gauge to be Taken — Reports to Commission.* All oil and gas operators shall between the 1st and 10th days of each calendar month, take a reading of the rock pressure of all wells producing natural gas, and shall forthwith report to the Corporation Commission on gauge blanks furnished by the Commission. All such oil and gas operators shall quarterly and before the 10th day of the month following the quarter after which any oil or gas well has been completed, take a gauge of the volume of rock pressure of any such well producing natural gas and shall forthwith report to the Corporation Commission on gauge blanks furnished by the Commission; provided that nothing contained in this rule shall be construed as prohibiting the blowing of gas wells pro-

ducing fluid in such quantities as might result in damage to oil or gas sands. (Amendment to Rule 31 Promulgated January 10th, 1929.)

RULE 32. *Production to be Restrained to 25 Per Cent. of Potential Capacity.* When the gas from any well is being used, the flow or production thereof shall be restrained to 25 per cent. of the potential capacity of the same; that is to say in any day (24 hours) the well shall not be permitted to flow or produce more than one-fourth of the potential capacity thereof, as shown by the last monthly gauge. (Rule 29, Order No. 937.)

RULE 33. *Notification of Fires and Breaks or Leaks in Lines.* All drillers, operators, pipe line companies, and individuals, operating oil or gas wells or pipe lines shall immediately notify the Commission by telegraph or telephone and by letter of all fires which occur at oil and gas wells or oil tanks owned, operated or controlled by them, or on their property, and shall immediately report all tanks struck by lightning and any other fires which destroy crude oil or natural gas, and shall immediately report in the manner heretofore described any breaks or leaks in tanks or pipe lines from which oil or gas is escaping. In all reports of fires, breaks, or leaks in pipes, or other accidents of this nature, the location of the well, tank, or line break shall be given, showing location by quarter section, township, and range.

RULE 34. *Reports from Pipe Line Companies.* The Commission will from time to time require oil and gas pipe line Companies to make reports to the Corporation Commission showing wells connected with their lines during any month, names of parties from whom oil and gas are purchased, the amount of production taken therefrom, the amount of oil or gas purchased therefrom; and all oil and gas pipe line companies shall, in addition to the other reports required by the rules of the Corporation Commission, furnish to the Commission duplicates of all reports made to the State Auditor under the oil and gas gross production tax laws. The Commission will, in case of

overproduction or for any other reason which it deems urgent, require oil and gas pipe line companies to furnish daily reports of the amount of oil or gas purchased or taken from different wells or parties.

"RULE 35. *Prescribing Conditions Under Which Pipe Line Companies May Connect With Oil or Gas Wells.* Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish a certificate from the Corporation Commission that the conservation laws of the State have been complied with; provided this rule shall not prevent the temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State.

"RULE 36. *Conservation Laws and Rules of the Corporation Commission to be Complied With Before Connecting Wells With Pipe Lines.* Owners or operators of oil or gas wells shall, before connecting with any oil or gas pipe line, secure from the Corporation Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Corporation Commission; provided that this rule shall not prevent temporary connection with pipe lines in order to take care of production until opportunity shall have been given for securing such certificate; provided, further, that the owners or operators of such wells shall in a known or proven field make application for such certificate in anticipation of production.

"RULE 37. *Drilling Records to be Kept at Wells.* All operators, contractors, or drillers, shall keep at each well accurate records of the drilling, re-drilling, or deepening of all wells, showing all formations drilled through, casing used, and other information in connection with the drilling operation of the property and any and all of this information shall be furnished to the Commission upon request, or to any conservation agent of the Commission.

"RULE 38. *Conservation Agents to Have Access to All Wells and All Well Records.* "Conservation agents of the Commission shall have access to all wells and to all well records, and all companies, contractors, or drillers shall permit any conservation agent of the Corporation Commission to come upon any lease or property operated and controlled by them, and to inspect any and all wells and the records of said well or wells, and to have access at all times to any and all wells, and any and all records of said wells.

"Provided, that information so obtained by conservation agents shall be considered official information and shall be reported only to the Corporation Commission.

"RULE 39. *Notice to Contractors, Drillers, and Others to Observe Rules.* All contractors and drillers carrying on business or doing work in the oil or gas fields of the State, as well as leaseholders, landowners, and operators generally, shall take notice of and are hereby directed to observe and apply the foregoing rules and regulations; and all contractors, drillers, landowners and operators will be held responsible for infraction of said rules and regulations.

"RULE 40. *Conservation Agents to Co-operate With Oil and Gas Inspectors of the Department of the Interior.* All conservation agents appointed by the Corporation Commission shall co-operate with and invite the co-operation of the oil and gas inspectors of the United States Bureau of Mines of the Department of the Interior.

"RULE 41. *Conservation Agents to Assist in Enforcement of Rules.* All conservation agents of the Commission shall assist in the enforcement of these rules and shall immediately notify the Commission upon observance of any infraction thereof.

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ADDITIONAL RULES WILL BE PRESCRIBED FROM TIME TO TIME

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The Commission will from time to time prescribe additional rules, regulations and requirements for the conservation of crude oil or petroleum, and natural gas.

This Order shall be in full force and effect from and after August 20, 1917.

IN WITNESS WHEREOF, we have hereunto set our hands and caused to be affixed the seal of said Commission, this the 16th day of July, 1917.

Corporation Commission.
J. E. LOVE, *Chairman.*
W. D. HUMPHREY, *Commissioner.*
CAMPBELL RUSSELL, *Commissioner.*

(Attest)
J. H. HYDE, *Secretary.*

## AMENDMENTS TO COMMISSIONER'S ORDER

## No. 1299

Adopted January 5, 1922, in Order No. 1986

(1) Amendment to Rule No. 11 of said Order No. 1299:

"The owners of any oil and gas mining lease in this state upon which drilling operations are or may hereafter be carried on shall post a substantial sign in a conspicuous place upon each well or derrick, giving the name of the farm, section, township and range, the name of the lease owner and number of the well."

(2) Amendment to Rule No. 13 of said Order No. 1299:

"The Commission may at any time upon its own motion or upon complaint received from any person interested in the property to be drilled on

in adjacent property require from the owner of the lease or the person, firm, corporation or association drilling the well a bond in a sum not to exceed $2500.00 running to the State of Oklahoma conditioned that said well upon abandonment shall be plugged in accordance with the rules and regulations of the Commission. Said bond to remain in force and effect until the plugging is approved by the Conservation Department: provided that any person, firm, company or corporation may file with the Commission a blanket bond in a sum not to exceed $10,000.00 with or without surety as may be required by the Commission and to be approved by the Commission covering all wells drilling or to be drilled by the principal in said bond and said bond shall be considered in full compliance with this order until such time as the penalty of said bond shall be collected for violation of the terms thereof."

EXHIBIT H

Certificate

This is to certify that from March 7, 1938, to May 31, 1941, the Magnolia Petroleum Company corporation, voluntarily paid all gross production and pro ration taxes assessed on its properties involved in Cause No. 41, now pending in the Supreme Court of the United States.

This is to further certify that production was first had from the Haymaker and Mullenday leases in December, 1941, and from the Achilles lease in January, 1942. These three leases are the ones involved in Cause No. 40, now pending in the United States Supreme Court. The Texas Company voluntarily paid both gross production and pro ration taxes from the date of initial production on the above referred to leases to August 31, 1942.

This is to further certify that neither the Magnolia Petroleum Company nor the Texas Company filed a claim for refund covering the taxes paid as aforesaid.

Witness my hand this 21st day of November, 1942.

OKLAHOMA TAX COMMISSION